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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.	Application 12-04-019 (Filed April 23, 2012)

JOINT CONSOLIDATED REPLY COMMENTS ON THE PHASE 2 PROPOSED DECISION

Sarah E. Leeper
Cathy A. Hongola-Baptista
California American Water
555 Montgomery Street, Suite 816
San Francisco, CA 94111
For: California-American Water Company
sarah.leeper@amwater.com
(415) 863-2960

David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950-4221
For: Monterey Peninsula Water Management District
dave@laredolaw.net
(831) 646-1502

James W. McTarnaghan
Laura G. Zagar
Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
For: Monterey Regional Water Pollution Control Agency
jmctarnaghan@perkinscoie.com
(415) 344-7007

Robert Wellington
Wellington Law Offices
857 Cass Street, Suite D
Monterey, CA 93940
For: Monterey Regional Water Pollution Control Agency
attys@wellingtonlaw.com
(831) 373-8733

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Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure,[1] California-American Water Company ("Cal-Am"), Monterey Peninsula Water Management District ("MPWMD"), and Monterey Regional Water Pollution Control Agency ("MRWPCA") ("Joint Parties")[2] hereby submit this consolidated reply to the comments submitted by the Office of Ratepayer Advocates ("ORA") and the Public Trust Alliance ("PTA") on the Phase 2 Proposed Decision ("PD").

ORA's and PTA's comments should be disregarded and the PD issued with the limited modifications suggested by the Joint Parties. ORA's requested modifications to the PD should be rejected because (1) the PD applied the correct burden of proof, (2) ORA's arguments as to why authorization to construct the Monterey Pipeline and Pump Station (collectively, the "Monterey Pipeline") should be delayed simply rehash its prior arguments, each of which the PD rejected, and (3) the PD properly provides for Cal-Am to recover costs of the Monterey Pipeline. PTA supports the PD, but its comments rely almost entirely on extra-record evidence that is unnecessary to support the PD.

I. THE PREPONDERANCE OF THE EVIDENCE STANDARD IS APPLICABLE

ORA's argument that the Commission should require a clear and convincing record" is unsupported as a matter of law and should be rejected. The Commission has determined that the standard of review is preponderance of the evidence.[3] ORA's

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[1] Unless otherwise stated, all further references to the "Rules" are to the Commission's Rules of Practice and Procedure.

[2] Pursuant to Commission Rule 1.8(d), counsel for MPWMD and MRWPCA have authorized counsel for Cal-Am to sign these Joint Reply Comments on their behalf.

[3] *See e.g.,* D.08-12-058 at pp. 17-19 (holding that preponderance of evidence appropriate standard of review); D.09-07-024 at p. 3, n.3 ("[T]he burden of proof issue cannot be considered an issue of first impression. By default the Commission has applied the preponderance standard in CPCN proceedings, and therefore there is precedent for applying the less stringent standard."); D.14-07-029, p. 7 (affirming preponderance of the evidence in CPCN application). This standard

reasoning that a higher burden should be applied here because it involves authorization of a $50.3 million infrastructure project is without merit. There is no basis for concluding that this project should be subject to a different burden of proof, particularly considering many CPCN proceedings involve projects with much higher costs. ORA is likely more concerned with finding a mechanism to delay construction of the Monterey Pipeline, than the application of the proper burden of proof. Preponderance of the evidence is, however, the appropriate standard; the PD commits no "legal error."

II. THE RECORD SUPPORTS THE PD'S GRANT OF AUTHORITY TO CAL-AM TO CONSTRUCT THE MONTEREY PIPELINE

Under either standard of review, the evidence in the record is sufficient to authorize construction of the Monterey Pipeline. Rehashing its same arguments, ORA erroneously contends that the "record demonstrates that the expedited construction of these facilities is not appropriate."[4] As found on pages 24-26 of the PD, each of ORA's arguments to delay authorization of construction fail.

First, ORA's claim that Cal-Am's existing infrastructure is sufficient to obtain full GWR and ASR benefits lacks support. To the contrary, record evidence establishes that there are system constraints that preclude Cal-Am from maximizing GWR and ASR benefits, such as a hydraulic trough, limits on diversion capacity because of current pipe sizing, and issues with moving water throughout the system.[5] The PD correctly concludes the Monterey Pipeline is necessary to take full advantage of GWR and ASR.

Second, contrary to ORA's argument, the PD also correctly concludes that evidence in the record establishes that the Monterey Pipeline are necessary, independent

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is also the default standard in civil cases, with the "clear and convincing" standard used only under certain circumstances required by law. *See* Evid. Code § 115.

[4] ORA Opening Comments, p. 2.

[5] RT, pp. 3159:17-23; 3162:12 - 3163:2; 3166:20 – 3167:4; 3201:21 – 3203:23; 3204:4-21; Exh. JE-2, Joint Supplemental Testimony, p. 14:14-21.

of how the desalination plant proceeds.[6] ORA fails to identify any evidence or reasoning – other than its own say so – that conflicts with this conclusion.

Third, ORA's argument that construction of the Monterey Pipeline should be delayed because the final design of the desalination plant is uncertain is without merit.[7] There is no evidence to support ORA's claim that if the desalination plant were not built, "the final design, sizing, and cost of this pipeline would likely be substantially different."[8] In sum, ORA continues to provide no evidence to support its claim that a delay is necessary. Cal-Am has established an independent need for the Monterey Pipeline, and the PD correctly finds that ORA's arguments provide no reason to delay authorization of Monterey Pipeline.

III. THE PD CORRECTLY ALLOWS CAL-AM TO FILE AN INITIAL ADVICE LETTER ON MARCH 30, 2017 TO RECOVER MONTEREY PIPELINE COSTS

The PD correctly authorizes Cal-Am to file an initial advice letter on March 30, 2017 to recover costs for the Monterey Pipeline.[9] In particular, the PD noted that the "used and useful" costs to be recovered through the initial advice letter are the "pipeline and pump station costs spent on construction up to March 30, 2017."[10]

ORA claims that the PD's description of these costs as used and useful is contrary to law and Commission precedent.[11] ORA cites Public Utilities Code Section 701.10(a), a previous definition of used and useful, and attempts to distinguish these circumstances from those addressed in D.06-12-040, cited by the PD in support of its finding.[12] ORA's claim that Section 701.10(a) supports its argument is confusing and unpersuasive. While

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[6] *See* Joint Opening Brief on Phase 2 Issues, filed June 6, 2016, at pp. 26-35, and the numerous record citations therein; *see also* RT, pp. 3224:5-10, 3215:18-3216:16, 3217:22-3218:4.

[7] ORA Opening Comments, p. 2.

[8] *Id*.

[9] PD, p. 41.

[10] *Id*.

[11] ORA Opening Comments, pp. 3-4.

[12] PD, p. 41, fn. 44, citing D.06-12-040, *Application of California-American Water Company for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project*, Opinion on Request for Interim Rate Relief.

this section of the Public Utilities Code references "used and useful" in the context of the utilities' ability to have an opportunity to earn a reasonable return, it does not define the term "used and useful" and there is nothing that contradicts the PD's finding.[13] A more apt citation is to Section 701, which notes that the Commission "may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

ORA also cites D.84-09-089, which states that utility property must actually be in use and providing service to be included the utility's rate base.[14] While this may be true in many circumstances, the Commission has the authority to provide for different treatment when justified.[15] As the Commission has noted, "it is not legal error for the Commission to deviate from prior Commission decisions because the Commission is not bound by its own precedent."[16]

Although ORA admits that the Commission allowed costs for utility property in rate base before the facilities were providing service in D.06-12-040, ORA attempts to distinguish that decision because it dealt with preconstruction costs, not construction costs, as would be the case here.[17] This, however, is a distinction without a difference. The key finding of D.06-12-040 is that the "unique and exigent circumstances . . . justify interim recovery of costs."[18] Just as the unique and exigent circumstances facing Cal-Am, its customers, and the Monterey Peninsula justified interim recovery in D.06-12-

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[13] *See* Exh. JE-2, Joint Supplemental Testimony, pp.19:18-20:5. Indeed, Cal-Am expects that the portion of the Monterey Pipeline facilities completed by March 30, 2017 will be used and useful to provide additional fire protection and reliability through additional system interconnections.

[14] ORA Opening Comments, pp. 3-4, citing *LNG Cost Recovery* (1984) 16 CPUC2d 205, 228.

[15] In fact, the Commission's policy for water utilities offers the opportunity to account for Construction Work in Progress (CWIP) for certain projects in rate base while the projects are still being developed. 2005 Water Action Plan, p. 22, available under the Resources tab at http://www.cpuc.ca.gov/water/.

[16] D.06-12-040, p. 23, citing *In re Pacific Gas & Electric Co.* (1988) 30 CPUC2d 189, 223-225.

[17] ORA Opening Comments, p. 4.

[18] D.06-12-040, p. 22.

040, the current circumstances justify interim recovery here. In particular, the State Water Resources Control Board has set certain deadlines and failure to meet the deadline could have serious consequences for Cal-Am and its customers.[19] Moreover, as the PD correctly recognizes, the initial advice letter will moderate AFUDC to the benefit of ratepayers. Therefore, the Commission should adopt the PD's recommended authorization of the initial advice letter to recover costs for the Monterey Pipeline.

IV. PTA'S EXTRA-RECORD EVIDENCE SHOULD BE DISREGARDED.

PTA supports adoption of the WPA.[20] PTA erroneously suggests, however, that the Commission should consider out of record evidence of developments that occurred after the Commission closed the evidentiary record for Phase 2 of this proceeding because such developments support adoption of the WPA.[21] The Commission should not consider this evidence because it is outside of the evidentiary record and there is more than sufficient evidence in the record to support approval of the WPA.

V. CONCLUSION

The Joint Parties respectfully request that the Commission reject the proposed modifications by ORA and disregard the evidence and arguments of PTA that are outside the record. The Joint Parties further request the Commission revise the PD to include the requested modifications set forth in Attachment B to the Joint Parties' Comments.

Dated: September 6, 2016

By: */s/ Sarah E. Leeper*

Sarah E. Leeper, Attorney
California-American Water Company
555 Montgomery Street, Suite 816
San Francisco, CA 94111
For: California-American Water Company

[19] PD, p. 41, fn. 44.
[20] PTA Opening Comments, p. 5.
[21] *Id*. at 6-15.